

**UNITED STATES DISTRICT COURT  
IN THE SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION**

Howard Boyer,  
Plaintiff,

v.

Home Depot U.S.A., Inc.,  
Defendant.

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C.A. No. 2:05-cv-475

**MEMORANDUM OPINION AND ORDER DENYING LEAVE TO AMEND**

Pending before the Court is defendant's motion for leave to file an amended answer (D.E. 61). Because defendant has not made a showing of good cause, the motion (D.E. 61) is DENIED.

In its motion, defendant argues that Federal Rule of Civil Procedure 15(b) governs its request for leave to amend pleadings, and as such, leave should be freely given unless its opponent can show prejudice, bad faith, or undue delay. (D.E. 61, ¶ 4). This is incorrect. Once a district court has entered a scheduling order, Federal Rule of Civil Procedure 16(b) governs the amendment of pleadings. *S&W Enterprises, L.L.C. v. South Trust Bank of Alabama, NA*, 315 F.3d 533, 535–536 (5th Cir. 2003). Under this rule, a scheduling order “shall not be modified except upon a showing of good cause and by leave of the district judge.” FED. R. CIV. P. 16(b). The good cause standard requires the “party seeking relief to show that the deadlines cannot reasonably be met despite the diligence of the party needing the extension.” *Id.* (quoting 6A CHARLES ALAN WRIGHT, ARTHUR R. MILLER,

MARRY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 1522.1 (2d ed. 1990)).

The Court entered a scheduling order in this case on November 21, 2005. (D.E. 15). As such, Federal Rule of Civil Procedure 16(b) applies, and Rule 15(b) does not. Although plaintiff has not responded to defendant's motion for leave, the burden is on the defendant to articulate some showing of good cause. Because defendant has made no such showing, the motion for leave to amend pleadings (D.E. 61) is DENIED. The Court ORDERS the clerk to strike entry 62 (D.E. 62) from the docket sheet of this cause.

Ordered this 7th day of December, 2006.

  
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HAYDEN HEAD  
CHIEF JUDGE